it might require all within the same class to be treated alike. Even the provision found in many of the State Constitutions, that taxes "shall be equal and uniform," does not prevent classification of the objects of taxation.

There is perhaps no necessity of relying on either the 5th Amendment or Section 55 of the Organic Act to show that, while the legislature may classify, it cannot aribtrarily discriminate in matters of taxation. The restrictions inherent in the nature of free government and American institutions as well as in the very definition of a tax may be sufficient to prevent unjust discrimination. As was said in the dissenting opinion of *Campbell* v. *Shaw*, *supra*, that opinion in this respect arriving on general principles at the conclusion that the majority of the court drew from certain provisions in the constitution of the Republic of Hawaii, since abrogated: "The attributes of equality and uniformity inhere, however, to some extent in the very idea of a tax," and, referring to the 14th Amendment and to State constitutional provisions requiring equality and uniformity, "It is everywhere conceded that these provisions do not take from the legislature the power to select or classify the subjects of taxation, whether persons or things. The rule of uniformity is complied with if all persons or things in the same class are treated alike, and the rule of equality requires the existence of the power of classification. For if but one kind of tax could be laid and that by an iron rule of uniformity, taxation would fall unequally on different persons. Where natural distinctions require discrimination, not to discriminate works injustice. Our constitution requires approximate real equality of result in the aggregate, not mere equality in form in the case of each particular tax. But when there is selection or classification it must be real classification; it must be based on reasonable grounds; otherwise it would not be classification. To arbitrarily discriminate would be exaction, extortion, confiscation; not taxation. And this is the distinction everywhere taken. If there is real classification, the court cannot interfere; if there is arbitrary, capricious or unreasonable discrimination, the court may interfere. There is always, however, a very strong presumption not only that the legislature intended to act constitutionally, but that it succeeded in doing so, and that the court should not declare an act of the legislature unconstitutional except in a very clear case. A few references will make clearer the foregoing propositions and at the same time illustrate their practical application.

"In *Pacific Express Co.* v. *Seibert*, 142 U. S. 339, a special tax was laid upon express companies which did not own their own means of transportation and not upon other express companies, and the contention was that the rule of uniformity and equality was destroyed by arbitrary discrimination, but the court held that there was an essentiol difference between companies that owned their own means of transportation and those that did not, inasmuch as the former possessed property which was subject to other taxes and the latter would escape taxation unless taxed specially, and hence the classification was justified.

"Referring to a State constitutional provision requiring uniformity and equality of taxation and the 14th Amendment to the Federal Constitution, the court said:

" 'This court has repeatedly laid down the doctrine that diversity of taxation, both with respect to the amount imposed and the various species of property selected either for bearing its burdens or for being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms; and that a system which imposes the same tax upon every species of property, irrespective of its nature or condition of class, will be destructive of the principle of uniformity and equality in taxation and of a just adaptation of property to its burdens.' See also *West. Un. Tel. Co. v. Indiana*, 165 U. S. 304, 309.

"In *Com. v. Div. Canal Co.*, 123 Pa. 594, corporate obligations were taken out of the general designation of subjects and taxed upon a different standard of valuation and with a different method of collection. The court found several reasons why corporate and individual obligations might be distinguished in classification, among which were the fact that the former as a class were more capable of concealment and the fact that they had more of a commercial quality and were more subject to fluctuations in value, and in sustaining the constitutionality of the tax, said:

" 'Absolute equality is of course unattainable; a mere approximate equality is all that can reasonably be expected. A mere diversity in the methods of assessment and collection, however, if these methods are provided by general laws, violates no rule of right, if when these methods are applied the results are practically uniform. If there is a substantial uniformity, however different the procedure, there is a compliance with the constitutional provisions; even when there may be some disparity of results, if uniformity is the purpose of the legislature, there is a substantial compliance. Nor is classification necessarily based upon any essential differences in the nature or, indeed, the condition of the various subjects; it may be based as well upon the want of adaptability to the same methods of taxation, or upon the impracticability of applying to the various subjects the same methods, so as to produce just and reasonably uniform results, or it may be based upon well-grounded considerations of public policy.

" 'Hence it is that some classes of corportions are taxed upon net earnings, or income; others upon capital stock, the value thereof to be ascertained by their annual dividends, or in a certain event upon the actual value of the shares; others upon their gross receipts; insurance companies upon the gross amount of their premiums; coal and mining companies at a specific sum for every ton of coal mined, etc.

" 'Real estate, for taxation, has been classified as seated and unseated, and for municipal purposes may, perhaps, admit of further classification. Collateral inheritances are distinguished from those that are direct, the former being subject to taxation, the latter not. Foreign insurance companies have been distinguished from domestic companies, and taxed independently and differently. So, trades, professions, callings, and even single men have been taxed by classification, and it has been said that professional men may be classified as physicians, lawyers, clergymen, etc.; tradesmen as merchants, mechanics, etc.; and other persons as bankers. manufacturers, etc., and a uniform tax assessed upon each class. Not only have taxes been laid in all these various forms, rated on values, on dividends or profits, on premiums, on net earnings, and on gross receipts, but also by specific sums on specific articles. The road bed, station houses, rolling stock and equipments of a railroad company; the canal bed, and berm banks, the locks, lock houses, etc., of a canal company; the banking house or place of business of a banking company, etc., are withdrawn from the ordinary processes of general taxation and are reached in a tax upon capital stock, which has always been regarded as a tax upon the property and assets. These several classifications and departures from uniformity in methods were intended simply to bring about a just uniformity in results.' * * * * * *

"These principles have been repeatedly applied under our various (Hawaiian) constitutions. To notice only some of our more general statutes—one imposes different import duties upon different commodities, another different occupation or license taxes upon different businesses, another different stamp duties upon different documents, and even our general internal tax law is full of classifications. It imposes different specific taxes on dogs, drays and carriages, and not on most other kinds of personal property, and without regard to their different values, and although these classes of property are owned by some persons and not by others; it imposes poll, school and road taxes upon males between certain ages and not upon females or other males, or certain clergymen, firemen and soldiers; in its definition of personal property for purposes of taxation *ad valorem* it enumerates certain classes and omits other classes of personal property; it imposes a special income tax upon insurance companies; it wholly exempts certain classes of property devoted to educational, religious and charitable purposes, and property to the extent of $300 by whomsoever owned whether it be the whole or a part of the property of the individual. No one has ever questioned * * * the constitutionality of these various discriminations. When an innovation is made it is apt to be looked upon with suspicion and there is a tendency to regard it as involving a new principle or no principle from the mere fact that we are not accustomed to it. The points now in question * * * involve merely new applications of old principles and may all be sustained by an application of those principles."

In the light of the principles above set forth and the cases referred to, it would seem hardly necessary to say more to show, not only that the legislature might classify but that it did properly classify as between individuals and corporations in this instance. Reference may, however, be made to passages found in regard to a similar provision in the Federal law of 1894, in *Pollock v. Farmers' Loan & Trust Co., supra.* Mr. Assistant Attorney General Whitney said in his argument (157 U. S. 477):

"It is further said that a corporation is not allowed to deduct $4000 from its income before paying the tax, as is the case with an individual. The reason is plain. This is not a tax upon gross income, but a tax upon net income. The net income of a corporation is radically different in character from that of an individual. Among the elements which go to make up the so-called net profits or income of an individual is that known to economists as 'wages of superintendence' or the value of the labor of the individual himself. See *Muser v. Magone*, 155 U. S. 240. The individual business man does not pay himself wages or keep any account representing his estimate of the value of his own services. Everything that he makes over and above what he pays out to somebody else must be returned as net income. The net income of a corporation, on the other hand, contains no such element. The 'wages of superintendence' consist of the salaries of its managers and is counted as an expense. When the individual owner of the business incorporates it, he at once begins to pay himself a salary from the funds of the corporation. If, therefore, the corporation were allowed the same *minimum* as an individual, there would be a lack of uniformity prejudicial to the individual."

We believe only two of the Justices referred to this provision in their opinions, both justifying it. Mr. Justice Harlan, after speaking of the exemption of incomes of individuals up to $4000, said (158 U. S. 676): "The statute allows corporations, when making returns of their net profits or income, to deduct actual operating and business expenses. Upon like grounds, as I suppose, Congress exempted incomes under $4000." Mr. Justice Brown said (Ib. 694): "The exemption of $4000 is designed, undoubtedly, to cover the actual living expenses of the large majority of families, and the fact that it is not applied to corporations is explained by the fact that corporations have no corresponding expenses. The expenses of earning their profits are, of course, deducted in the same manner as the corresponding expenses of a private individual are deductible from the earnings of his business. The moment the profits of a corporation are paid over to the stockholders, the exemption of $4000 attaches to them in the hands of each stockholder."

That the reason assigned for this distinction by Mr. Justice Brown, namely, that the exemption of $4000 was for personal and family expenses and "that corporations have no corresponding expenses," was one that the legislature had in mind, is shown by the proviso contained in Section 4 of the Act (which provides for deductions of necessary expenses) "that no deduction shall be made for personal or family expenses, the exemption of one thousand dollars mentioned in Section 1 being in lieu of same."

Not only have corporations no personal or family expenses, but in estimating their incomes for the purposes of the tax they are allowed to deduct the cost of all labor employed in earning the income, while individuals are allowed to deduct only the cost of hired labor without any allowance for their own time or labor.

Point (2), unwarranted exemptions.

(a) The Act, as we have seen, exempts incomes of individuals up to one thousand dollars, and, as we have also seen, this is intended to be in lieu of personal and family expenses. It is contended that this is an unreasonable and arbitrary exemption.

It seems to be conceded that an exemption of some amount could properly be made just as an exemption of $300 is allowed under our general property tax law. The question is whether the amount of one thousand dollars is excessive. It can hardly be contended that it is so large as to manifest a purpose on the part of the legislature to step from its proper sphere of action in providing for a tax and to use the form of a tax law merely for the purpose of arbitrary exaction or confiscation from the few wealthy members of the community.

In England exemptions of $750 have been allowed. In the Federal income tax laws of 1861-70, the exemptions were at different times, $600, $800, $1000 and $2000. In Massachusetts an exemption of $2000 has been allowed under an income tax law. In the Federal law of 1894 the exemption amounted to $4000. Three members of the court referred to this in their opinions referred to. Mr. Justice Field thought the exemption too large (157 U. S. 596). Mr. Justice Harlan said (158 U. S. 675):

"In this connection, and as a ground for annulling the provisions taxing incomes, counsel for the appellant refers to the exemption of incomes that do not exceed $4000. It is said that such an exemption is too large in amount. That may be conceded. But the court cannot for that reason alone declare the exemption to be invalid. Every one, I take it, will concede that Congress, in taxing incomes, may rightfully allow an exemption in some amount. That was done in the income tax laws of 1861 and in subsequent laws, and was never questioned. Such exemptions rest upon grounds of public policy, of which Congress must judge; and that determination cannot be interfered with by the judicial branch of the government, unless the exemption is of such a character and is so unreasonably large as to authorize the court to say that Congress, under the pretence merely of legislating for the general good, has put upon a few persons burdens that, by every principle of justice and under every sound view of *taxation*, ought to have been placed upon all or upon the great mass of the people. If the exemption had been placed at $1,500 or even $2,000, few, I think, would have contended that Congress, in so doing, had exceeded its powers. In view of the increased cost of living at this day, as compared with other times, the difference between either of those amounts and $4,000 is not so great as to justify the courts in striking down all of the income tax provisions. The basis upon which such exemptions rest is that the general welfare requires that in taxing incomes, such exemption should be made as will fairly cover the annual expenses of the average family, and thus prevent the members of such families becoming a charge upon the public."

Mr. Justice Brown said (Ib. 693):

"Irrespective, however, of the Constitution, a tax which is wanting in uniformity among members of the same class is, or may be, invalid. But this does not deprive the legislature of the power to make exemptions, provided such exemptions rest upon some principle, and are not purely arbitrary, or created solely for the purpose of favoring some person or body of persons. Thus in every civilized country there is an exemption of small incomes, which it would be manifest cruelty to tax, and the power to make such exemptions once granted, the amount is within the discretion of the legislature, and so long as that power is not wantonly abused, the courts are bound to respect it. In this law there is an exemption of $4,000, which indicates a purpose of the part of Congress that the burden of this tax shall fall on the wealthy, or at least upon the well-to-do. If men who have the income or property beyond their pressing needs are not the ones to pay taxes, it is difficult to say who are; in other words, enlightened taxation is imposed upon property and not upon persons. Poll taxes, formerly a considerable source of revenue, are now practically obsolete. The exemption of $4,000 is designed, undoubtedly, to cover the actual living expenses of the large majority of families."

In *Minot v. Winthrop*, 162 Mass. 113, the court held that the legislature acted within its discretion in making exemptions of $10,000 in an inheritance tax law, although the Constitution required the tax to be "reasonable". No doubt an exemption in such a law might be larger than one in an income tax law under such a constitutional provision.

As shown by the above references, the amount of an exemption of this kind is largely within the discretion of the legislature and the court cannot say that it abused its discretion in this instance.

(b) The Act provides in Section 4 that "only one deduction of one thousand dollars shall be made from the aggregate annual income of all members of one family composed of one or both parents and one or more minor children, or husband and wife; that guardians shall be allowed to make a deduction in favor of each and every ward, except where two or more wards are comprised in one family, in which case the aggregate deduction in their favor shall not exceed one thousand dollars."

It is contended that this provision discriminates between large and small families, between married and unmarried persons especially if the wife as well as the husband is earning an income, and between two or more wards comprised in one family and wards not comprised in one family.

Similar provisions were made in the Federal income tax laws, but though the same arguments were urged against them in the cases above cited, we believe no member of the court alluded to them. Mr. Assistant Attorney-General Whitney referred to them in his argument as follows :

"Objection is further made that but one exemption is allowed to each family, whether its income belong to one member or is contributed by more than one—that is, when the family consists of husband and wife, or parents and minor children, so that the income is combined by the common law. This is a corollary to the reasoning upon which the law is based. Two families of equal size and pecuniary ability may be presumed to suffer to the same extent from taxes upon consumption, whether the income all belongs to one member of the family, or not."

It is impossible to attain absolute equality or uniformity in taxation. Approximate equality and uniformity is all that is required. The legislature may classify objects and provide different methods of estimating amounts or values. So long as it acts in good faith and on general lines and makes distinctions on some reasonable basis, the courts cannot interfere. The provisions in question seem to be in harmony with the general theory of the Act. The Act seems to deal with units whether corporate or private. It treats as a unit all whether few or many, large or small, whose income or incomes on the one hand and expenses on the other hand are combined. Taxation laws must be practical. They cannot be utopian. Perhaps no two persons would agree as to just what a perfect tax law should be. It is easy to raise objections, but the moment an attempt is made to obviate the objections by framing the law differently, new objections arise. If the thousand-dollar exemption were made to apply to each individual, there would doubtless be much greater inequality in actual results than is the case under the law as it stands, as will appear by a little reflection.

(c) Section 3, which prescribes the method of estimating incomes, provides that they shall include, among other things, "the amount of sales of all movable property, less the amount expended in the purchase or production of the same, and in the case of a person not including any part thereof consumed directly by him or his family."

It is contended that this is a discrimination in favor of farmers or agriculturists against other persons.

The provision is general. It is not confined to any particular class. It is not invalid because it operates differently on different members of the community. As well might it be argued that the carriage tax is invalid because it discriminates in favor of non-carriage owners against carriage owners. The provision in question acts uniformly upon all within its scope. Further, as we remarked above, tax laws must be practical. It would be next to impossible for every one to keep an account and estimate the value of everything he produced and consumed. Accordingly, the law makes sales and expenditures the basis of estimating income in the case of movable property, as it does in the case of real property, when dealing with the property itself as distinguished from the income derived from it.

(d) Section 2, which imposes the tax on corporations, contains a proviso, "that nothing herein contained shall apply to corporations, companies or associations conducted solely for charitable, religious, educational or scientific purposes, including fraternal beneficial societies, nor to insurance companies taxed on a percentage of the premiums under the authority of another Act."

No question seems to be raised as to charitable, religious, educational, scientific or fraternal beneficial societies, corporations or companies, but it is contended that there is no reasonable basis for exempting insurance companies; that, while there might be some basis for this distinction, because an income tax is laid on insurance companies under another Act, yet that basis is removed by the fact that that other Act expressly exempts such companies from other taxes under that Act, thus leading to the result that insurance companies are taxed only once while other companies are taxed twice.

It will be noticed that this Act exempts only such